

Calendar No. 488

106TH CONGRESS
2D SESSION

H. R. 3090

[Report No. 106-258]

A BILL

To amend the Alaska Native Claims Settlement Act
to restore certain lands to the Elim Native Cor-
poration, and for other purposes.

APRIL 10, 2000

Reported without amendment

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Received

NOVEMBER 19, 1999

Read twice and referred to the Committee on Energy and Natural Resources

APRIL 10, 2000

Reported by Mr. MURKOWSKI, without amendment

AN ACT

To amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. ELIM NATIVE CORPORATION LAND RESTORA-**
2 **TION.**

3 Section 19 of the Alaska Native Claims Settlement
4 Act (43 U.S.C. 1618) is amended by adding at the end
5 the following new subsection:

6 “(c)(1) FINDINGS.—The Congress finds that—

7 “(A) approximately 350,000 acres of land were
8 withdrawn by Executive orders in 1917 for the use
9 of the United States Bureau of Education and of
10 the Natives of Indigenous Alaskan race;

11 “(B) these lands comprised the Norton Bay
12 Reservation (later referred to as Norton Bay Native
13 Reserve) and were set aside for the benefit of the
14 Native inhabitants of the Eskimo Village of Elim,
15 Alaska;

16 “(C) in 1929, 50,000 acres of land were deleted
17 from the Norton Bay Reservation by Executive
18 order.

19 “(D) the lands were deleted from the Reserva-
20 tion for the benefit of others;

21 “(E) the deleted lands were not available to the
22 Native inhabitants of Elim under subsection (b) of
23 this section at the time of passage of this Act;

24 “(F) the deletion of these lands has been and
25 continues to be a source of deep concern to the in-
26 digenous people of Elim; and

1 “(G) until this matter is dealt with, it will con-
2 tinue to be a source of great frustration and sense
3 of loss among the shareholders of the Elim Native
4 Corporation and their descendants.

5 “(2) WITHDRAWAL.—The lands depicted and des-
6 ignated ‘Withdrawal Area’ on the map dated October 19,
7 1999, along with their legal descriptions, on file with the
8 Bureau of Land Management, and entitled ‘Land With-
9 drawal Elim Native Corporation’, are hereby withdrawn,
10 subject to valid existing rights, from all forms of appro-
11 priation or disposition under the public land laws, includ-
12 ing the mining and mineral leasing laws, for a period of
13 2 years from the date of the enactment of this subsection,
14 for selection by the Elim Native Corporation (hereinafter
15 referred to as ‘Elim’).

16 “(3) AUTHORITY TO SELECT AND CONVEY.—Elim is
17 authorized to select in accordance with the rules set out
18 in this paragraph, 50,000 acres of land (hereinafter re-
19 ferred to as ‘Conveyance Lands’) within the boundary of
20 the Withdrawal Area described in paragraph (2). The Sec-
21 retary is authorized and directed to convey to Elim in fee
22 the surface and subsurface estates to 50,000 acres of valid
23 selections in the Withdrawal Area, subject to the cov-
24 enants, reservations, terms and conditions and other pro-
25 visions of this subsection.

1 “(A) Elim shall have 2 years from the date of
2 the enactment of this subsection in which to file its
3 selection of no more than 60,000 acres of land from
4 the area described in paragraph (2). The selection
5 application shall be filed with the Bureau of Land
6 Management, Alaska State Office, shall describe a
7 single tract adjacent to United States Survey No.
8 2548, Alaska, and shall be reasonably compact, con-
9 tiguous, and in whole sections except when separated
10 by unavailable land or when the remaining entitle-
11 ment is less than a whole section. Elim shall
12 prioritize its selections made pursuant to this sub-
13 section at the time such selections are filed, and
14 such prioritization shall be irrevocable. Any lands se-
15 lected shall remain withdrawn until conveyed or full
16 entitlement has been achieved.

17 “(B) The selection filed by Elim pursuant to
18 this subsection shall be subject to valid existing
19 rights and may not supercede prior selections of the
20 State of Alaska, any Native corporation, or valid en-
21 tries of any private individual unless such selection
22 or entry is relinquished, rejected, or abandoned prior
23 to conveyance to Elim.

24 “(C) Upon receipt of the Conveyance Lands,
25 Elim shall have all legal rights and privileges as

1 landowner, subject only to the covenants, reserva-
2 tions, terms and conditions specified in this sub-
3 section.

4 “(D) Selection by Elim of lands under this sub-
5 section and final conveyance of those lands to Elim
6 shall constitute full satisfaction of any claim of enti-
7 tlement of Elim with respect to its land entitlement.

8 “(4) COVENANTS, RESERVATIONS, TERMS, AND CON-
9 DITIONS.—The covenants, reservations, terms and condi-
10 tions set forth in this paragraph and in paragraphs (5)
11 and (6) with respect to the Conveyance Lands shall run
12 with the land and shall be incorporated into the interim
13 conveyance, if any, and patent conveying the lands to
14 Elim.

15 “(A) Consistent with paragraph (3)(C) and
16 subject to the applicable covenants, reservations,
17 terms, and conditions contained in this paragraph
18 and paragraphs (5) and (6), Elim shall have all
19 rights to the timber resources of the Conveyance
20 Lands for any use including, but not limited to, con-
21 struction of homes, cabins, for firewood and other
22 domestic uses on any Elim lands: *Provided*, That
23 cutting and removal of Merchantable Timber from
24 the Conveyance Lands for sale shall not be per-
25 mitted: *Provided further*, That Elim shall not con-

1 struct roads and related infrastructure for the sup-
2 port of such cutting and removal of timber for sale
3 or permit others to do so. 'Merchantable Timber'
4 means timber that can be harvested and marketed
5 by a prudent operator.

6 “(B) Public Land Order 5563 of December 16,
7 1975, which made hot or medicinal springs available
8 to other Native Corporations for selection and con-
9 veyance, is hereby modified to the extent necessary
10 to permit the selection by Elim of the lands here-
11 tofore encompassed in any withdrawal of hot or me-
12 dicinal springs and is withdrawn pursuant to this
13 subsection. The Secretary is authorized and directed
14 to convey such selections of hot or medicinal springs
15 (hereinafter referred to as ‘hot springs’) subject to
16 applicable covenants, reservations, terms and condi-
17 tions contained in paragraphs (5) and (6).

18 “(C) Should Elim select and have conveyed to
19 it lands encompassing portions of the Tubutulik
20 River or Clear Creek, or both, Elim shall not permit
21 surface occupancy or knowingly permit any other ac-
22 tivity on those portions of land lying within the bed
23 of or within 300 feet of the ordinary high waterline
24 of either or both of these water courses for purposes
25 associated with mineral or other development or ac-

1 tivity if they would cause or are likely to cause ero-
2 sion or siltation of either water course to an extent
3 that would significantly adversely impact water qual-
4 ity or fish habitat.

5 “(5) RIGHTS RETAINED BY THE UNITED STATES.—

6 With respect to conveyances authorized in paragraph (3),
7 the following rights are retained by the United States:

8 “(A) To enter upon the conveyance lands, after
9 providing reasonable advance notice in writing to
10 Elim and after providing Elim with an opportunity
11 to have a representative present upon such entry, in
12 order to achieve the purpose and enforce the terms
13 of this paragraph and paragraphs (4) and (6).

14 “(B) To have, in addition to such rights held by
15 Elim, all rights and remedies available against per-
16 sons, jointly or severally, who cut or remove Mer-
17 chantable Timber for sale.

18 “(C) In cooperation with Elim, the right, but
19 not the obligation, to reforest in the event previously
20 existing Merchantable Timber is destroyed by fire,
21 wind, insects, disease, or other similar manmade or
22 natural occurrence (excluding manmade occurrences
23 resulting from the exercise by Elim of its lawful
24 rights to use the Conveyance Lands).

1 “(D) The right of ingress and egress over ease-
2 ments under section 17(b) for the public to visit, for
3 noncommercial purposes, hot springs located on the
4 Conveyance Lands and to use any part of the hot
5 springs that is not commercially developed.

6 “(E) The right to enter upon the lands con-
7 taining hot springs for the purpose of conducting
8 scientific research on such hot springs and to use
9 the results of such research without compensation to
10 Elim. Elim shall have an equal right to conduct re-
11 search on the hot springs and to use the results of
12 such research without compensation to the United
13 States.

14 “(F) A covenant that commercial development
15 of the hot springs by Elim or its successors, assigns,
16 or grantees shall include the right to develop only a
17 maximum of 15 percent of the hot springs and any
18 land within $\frac{1}{4}$ mile of the hot springs. Such com-
19 mercial development shall not alter the natural hy-
20 drologic or thermal system associated with the hot
21 springs. Not less than 85 percent of the lands within
22 $\frac{1}{4}$ mile of the hot springs shall be left in their nat-
23 ural state.

24 “(G) The right to exercise prosecutorial discre-
25 tion in the enforcement of any covenant, reservation,

1 term or condition shall not waive the right to enforce
2 any covenant, reservation, term or condition.

3 “(6) GENERAL.—

4 “(A) MEMORANDUM OF UNDERSTANDING.—

5 The Secretary and Elim shall, acting in good faith,
6 enter into a Memorandum of Understanding (herein-
7 after referred to as the ‘MOU’) to implement the
8 provisions of this subsection. The MOU shall include
9 among its provisions reasonable measures to protect
10 plants and animals in the hot springs on the Con-
11 veyance Lands and on the land within $\frac{1}{4}$ mile of the
12 hot springs. The parties shall agree to meet periodi-
13 cally to review the matters contained in the MOU
14 and to exercise their right to amend, replace, or ex-
15 tend the MOU. Such reviews shall include the au-
16 thority to relocate any of the easements set forth in
17 subparagraph (D) if the parties deem it advisable.

18 “(B) INCORPORATION OF TERMS.—Elim shall
19 incorporate the covenants, reservations, terms and
20 conditions, in this subsection in any deed or other
21 legal instrument by which it divests itself of any in-
22 terest in all or a portion of the Conveyance Lands,
23 including without limitation, a leasehold interest.

24 “(C) SECTION 17(b) EASEMENTS.—The Bureau
25 of Land Management, in consultation with Elim,

1 shall reserve in the conveyance to Elim easements to
2 the United States pursuant to subsection 17(b) that
3 are not in conflict with other easements specified in
4 this paragraph.

5 “(D) OTHER EASEMENTS.—The Bureau of
6 Land Management, in consultation with Elim, shall
7 reserve easements which shall include the right of
8 the public to enter upon and travel along the
9 Tubutulik River and Clear Creek within the Convey-
10 ance Lands. Such easements shall also include ease-
11 ments for trails confined to foot travel along, and
12 which may be established along each bank of, the
13 Tubutulik River and Clear Creek. Such trails shall
14 be 25 feet wide and upland of the ordinary high wa-
15 terline of the water courses. The trails may deviate
16 from the banks as necessary to go around man-made
17 or natural obstructions or to portage around haz-
18 ardous stretches of water. The easements shall also
19 include one-acre sites along the water courses at rea-
20 sonable intervals, selected in consultation with Elim,
21 which may be used to launch or take out water craft
22 from the water courses and to camp in non-perma-
23 nent structures for a period not to exceed 24 hours
24 without the consent of Elim.

1 “(E) INHOLDERS.—The owners of lands held
2 within the exterior boundaries of lands conveyed to
3 Elim shall have all rights of ingress and egress to
4 be vested in the inholder and the inholder’s agents,
5 employees, co-venturers, licensees, subsequent grant-
6 ees, or invitees, and such easements shall be re-
7 served in the conveyance to Elim. The inholder may
8 not exercise the right of ingress and egress in a
9 manner that may result in substantial damage to the
10 surface of the lands or make any permanent im-
11 provements on Conveyance Lands without the prior
12 consent of Elim.

13 “(F) IDITAROD TRAIL.—The Bureau of Land
14 Management may reserve an easement for the
15 Iditarod National Historic Trail in the conveyance to
16 Elim.

17 “(7) IMPLEMENTATION.—There are authorized to be
18 appropriated such sums as may be necessary to implement
19 this subsection.”.

20 **SEC. 2. COMMON STOCK TO ADOPTED-OUT DESCENDANTS.**

21 Section 7(h)(1)(C)(iii) of the Alaska Native Claims
22 Settlement Act (43 U.S.C. 1606(h)(1)(C)(iii)) is amended
23 by inserting before the period at the end the following:
24 “, notwithstanding an adoption, relinquishment, or termi-
25 nation of parental rights that may have altered or severed

1 the legal relationship between the gift donor and recipi-
2 ent”.

3 **SEC. 3. DEFINITION OF SETTLEMENT TRUST.**

4 Section 3(t)(2) of the Alaska Native Claims Settle-
5 ment Act (43 U.S.C. 1602(t)(2)) is amended by striking
6 “sole” and all that follows through “Stock” and inserting
7 “benefit of shareholders, Natives, and descendants of Na-
8 tives,”.

Passed the House of Representatives November 9,
1999.

Attest:

JEFF TRANDAHL,

Clerk.